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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,278	06/11/2002	Helmut Brehm	5003073-026US1	7874

29737 7590 12/02/2004

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EXAMINER

ASINOVSKY, OLGA

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/069,278

Applicant(s)

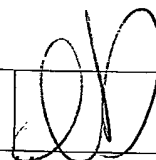
BREHM ET AL.

Examiner

Olga Asinovsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5-15 and 17-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-15,17-19 and 26 is/are allowed.
- 6) ☒ Claim(s) 1-3,5-12 and 20-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The status identifiers (withdrawn) for claims 4 and 16 have not been properly submitted with the Preliminary Amendment/Remarks and the Request to Continue Examination (RCE) of March 22, 2004. This Preliminary Amendment fails to comply with 37 CFR 1.121 (Notice of Non-Compliant Amendment). The status identifiers for claims 4 and 16 are cancelled. Support for this cancellation is found in the Preliminary Amendment and the Remarks filed on February 22, 2002, pages 1-5, wherein on page 5, claims 4 and 16 have been cancelled.)

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 6-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Dahmen et al U.S. Patent 5,712,316.

The rejection is set forth at pages 3-4 in the office action mailed on 06/07/2004 and it is incorporated here by reference.

### ***Response to Amendment***

3. Applicant's arguments filed on September 30, 2004 have been fully considered but they are not persuasive. Applicants' argument is that Dahmen'316 does not disclose a continuous polymerization process wherein at least one parameter of the

continuous polymerization process is varied by increasing and decreasing the parameter in the recurring pattern more than once during the polymerization process. Because Dahmen discloses a conventional variation in which a parameter may be increased or decreased.

The claimed composition or product made by a process it is a product. There is no evidence in the difference between the claimed product and the prior art product.

In ex parte prosecution, product-by-process claims are met by any product, no matter how made, that is the same product made by the recited process, *In re Thorpe*, 777 F2d 695, 227 USPQ 964 (Fe. Cir. 1985).

The chemical formulation of the composition in Dahmen's invention is the same that it is in the present claim 1.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-3, 5 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahmen et al US Patent 5,512,316.

Dahmen has been considered in the paragraph 3 above and in the previously mailed office action on 06/07/2004, pages 4-5.

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Dahmen does not disclose a polymer composition made by a process such that the polymerization is effected on a moving support, for claims 2-3 and 5. Dahmen discloses a continuous or discontinuous polymerization process by using suitable mixes, e.g., fluidized bed, mixers, paddle mixers, milling rolls, or twin-worm-mixers, column 6, line 15 and column 5, lines 65-67. It would have been obvious to one of ordinary skill in the art to select a suitable mixer having a moving support since Dahmen discloses different types of mixers that can be used within the same expectation of obtaining the adequate results.

Any additional non-reactive component would be expected in the powder-form cross-linked polymer in Dahmen' invention in light of the claim language "comprising" for the present claims 23-24.

It would have been obvious to one of ordinary skill in the art to use a continuous polymerization process for producing a powdered composition in Dahmen' invention wherein at least one ingredient can be added continuously during the polymerization process or wherein a parameter is referring to the a process condition such that said parameter can be changed during a polymerization process, for the present claim 25, because Dahmen'316 discloses the analogous powdered, cross-linked polymer.

### ***Allowable Subject Matter***

6. The following is a statement of reasons for the indication of allowable subject matter: Claims 13-15, 17-19 and 26 is a process claims. Wherein the continuous

polymerization process is varied by increasing and decreasing "the parameter" in a recurring pattern, during the polymerization process.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga Asinovsky whose telephone number is 571-272-1066. The examiner can normally be reached on 9:00 to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

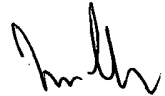
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

O.A.

November 29, 2004

Olga Asinovsky  
Examiner  
Art Unit 1711

  
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